

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

|                             |   |                                      |
|-----------------------------|---|--------------------------------------|
| (1) KENNETH GARELL,         | ) |                                      |
| (2) HANNA GARELL,           | ) |                                      |
|                             | ) |                                      |
| Plaintiffs,                 | ) |                                      |
|                             | ) |                                      |
| v.                          | ) | Case No.: 22-cv-00182-GKF-SH         |
|                             | ) | Tulsa County Case No.: CJ-2021-02887 |
| (1) FORTUNE TRANSPORTATION, | ) |                                      |
| COMPANY, INC.,              | ) |                                      |
| (2) RALPH BENNING,          | ) |                                      |
|                             | ) |                                      |
| Defendants.                 | ) |                                      |

**NOTICE OF REMOVAL**

Defendants, Fortune Transportation Company, Inc. (“Fortune”) and Ralph Benning (“Benning” whose full name is Steven Ralph Benning) (collectively “Defendants”) remove this action to the United States District Court for the Northern District of Oklahoma pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446. This action is removable because there is complete diversity of citizenship between Plaintiffs, Kenneth Garell and Hanna Garell (“Plaintiffs”) and Defendants, Fortune Transportation Company, Inc. and Ralph Benning, and because the amount in controversy, exclusive of interest and costs, exceeds the amount required for diversity jurisdiction. In support of this Notice of Removal, Defendants state:

**Procedural History**

1. On October 6, 2021, Plaintiff filed a Petition against Defendants commencing the civil action styled *Kenneth Garell and Hanna Garell v. Fortune Transportation Company, Inc.*, Case No. CJ-2021-02887, in the District Court of Tulsa County, Oklahoma (the “State Court Action”).

2. Plaintiff served Defendants with the Petition on April 4, 2022, by serving their attorney, Thomas Askew, who was authorized to accept service on their behalf.

3. Defendants have thus filed this Notice of Removal within the thirty-day period provided by 28 U.S.C. §1446(b) and within one year of the commencement of the action as required by 28 U.S.C. §1446(c)(1).

4. Pursuant to 28 U.S.C. §1446(a) and Local Rule LCvR 81.2, Defendants have attached as exhibits to this Notice of Removal true and legible copies of all documents filed or served in the State Court Action: a copy of the Docket Sheet from the State Court Action is attached as **Exhibit 1**; a copy of the Petition is attached as **Exhibit 2**; and a copy of the Notice of Service of Process is attached as **Exhibit 3**. At the time of filing this Notice of Removal, there have been no other filings or proceedings in the State Court Action except those attached as Exhibits 1-3.

5. Defendants have not filed responsive pleadings in the State Court Action. In filing this Notice of Removal, Defendants do not waive any defense or counterclaim that may be available.

### **Diversity of Citizenship**

6. Plaintiffs are residents and citizens of the state of Oklahoma.

7. Fortune is incorporated in the State of Minnesota and has its principal place of business in Windom, Minnesota. Accordingly, Fortune is a citizen of Minnesota. *See* 28 U.S.C. §1332(c) (“For the purposes of this section and second 1441 of this title...a corporation shall be deemed a citizen of every State and foreign state by which it has been incorporated and the State or foreign state where it has its principal place of business...”).

8. Defendant Ralph Benning (a/k/a Steven Ralph Benning) is a citizen of Fairbault County, Minnesota.

9. Therefore, there is complete diversity of citizenship between Plaintiff and Defendants in accordance with 28 U.S.C. §1332(a)(1).

**Amount in Controversy**

10. As shown in the Petition, the amount in controversy is alleged as being greater than the amount required for diversity jurisdiction, exclusive of interest and costs. (*See* Ex. 2, Pet., - “WHEREFORE” paragraph.)

**Removal Venue and Notice**

11. Removal venue is appropriate in this Court, as this Court embraces Tulsa County, the district in which the State Court Action is filed.

12. Written notice of the filing of this Notice of Removal will be given promptly to counsel for Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Tulsa County, Oklahoma, as required by 28 U.S.C. §1446(d).

**Conclusion**

13. This is a civil action over which this Court has original subject matter jurisdiction pursuant to the provisions of 28 U.S.C. §1332. This action is one that may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil action between citizens of different states, and the matter in controversy exceeds the amount required for diversity jurisdiction , exclusive of interests and costs.

14. Therefore, under the applicable provisions of 28 U.S.C. §§ 1332, 1441, and 1446, Defendants have complied with all necessary requirements and are entitled to remove this action.

Accordingly, Defendants remove all claims in the State Court Action from the District Court of Tulsa County, Oklahoma, to the United States District court for the Northern District of Oklahoma.

Respectfully submitted,

/s/ Thomas M. Askew  
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*Fortune Transportation Company, Inc.*  
*and Ralph Benning*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2022, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Thomas M. Askew  
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